

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

CONDUCTIX, INC.
10102 F Street
Omaha, NE 68127

and

UNITED STATES OF AMERICA FOR THE
USE AND BENEFIT OF CONDUCTIX, INC.

Plaintiffs,

vs.

K.C. ELECTRICAL CONSTRUCTION, INC.
4907 147th Street
Midlothian, IL 60445-2438

and

ALLEGHENY CASUALTY COMPANY
One Newark Center, 20th Floor
Newark, NJ 07102

Defendants

CASE NO. 2:18-CV-192

JUDGE

**COMPLAINT FOR BREACH OF
CONTRACT AND RECOVERY
UNDER MILLER ACT PAYMENT
BOND**

* * * *

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and provisions of the Miller Act, 40 U.S.C. § 3133(b)(3). This Court has pendent jurisdiction and supplemental jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. § 1367.

VENUE

2. The contract at issue was to be performed in Monroe County, Ohio. Venue therefore lies in the United States District Court for the Southern District of Ohio pursuant to 40 U.S.C. § 3133(b)(3)(B) and 28 U.S.C. § 1391(b)(2).

PARTIES

3. Plaintiff Conductix, Inc. (“Conductix”) is a corporation organized and existing under the laws of the State of Nebraska, with a principal place of business at 10102 F Street, Omaha, Nebraska 68127. Conductix brings some of the following causes of action in the name of the United States of America, as provided for in the Miller Act, 40 U.S.C. § 3133.
4. Defendant K.C. Electrical Construction, Inc. (“K.C.”) is a corporation organized and existing under the laws of the State of Illinois, with a principal place of business at 4907 147th Street, Midlothian, Illinois 60445.
5. Defendant Allegheny Casualty Company is a Pennsylvania insurance business corporation, organized and existing under the laws of the State of Pennsylvania.

STATEMENT OF FACTS

6. On or about January 30, 2017, Defendant K.C. entered into a contract with the United States of America through the U.S. Army Corps of Engineers, Pittsburgh District, to act as the prime contractor for the replacement of the conductor rail system at Hannibal Locks and Dam in Hannibal, Ohio (hereinafter the “Project”).
7. The contract number for the Hannibal Locks and Dam conductor rail system replacement is W911WN-17-C-8001 (hereinafter, the “Prime Contract”).
8. The Prime Contract amount was \$466,400.
9. Pursuant to 40 U.S.C. § 3131 and since the Prime Contract amount was greater than \$150,000, K.C. obtained both a performance bond and a payment bond from Defendant Allegheny Casualty Company. True and accurate copies of the performance bond and payment bond are attached to this Complaint as Exhibit A.

10. On or about March 4, 2017, K.C.'s president, Daniel Klaus, notified Conductix of K.C.'s intent to purchase electrical components for the Project.
11. K.C. required two separate shipments of the electrical components. The first shipment, consisting of five copies of the manuals, occurred on March 24, 2017. See Invoice 21166284 totaling \$48.43, attached to this Complaint as Exhibit B.
12. The second shipment, containing the electrical components, was delivered to K.C. at the Project address on September 7, 2017. See Invoice 21222027 totaling \$83,546.65, attached to this Complaint as Exhibit C.
13. Each invoice supplied by Conductix to K.C. clearly states the payment terms as net 30 days, so payment on Invoice 21166284 was due April 23, 2017, and payment on Invoice 21222027 was due October 7, 2017. See Exs. B and C.
14. The total owed to Conductix under Invoices 21166284 and 21222027 is \$83,595.08.
15. To date, Conductix has not been paid any of the \$83,595.08 it is due.
16. More than 90 days, but less than one year, has passed since the amounts were due to Conductix by K.C., and Conductix had a direct relationship with K.C., so this action is timely and proper pursuant to 40 U.S.C. § 3133.

FIRST CLAIM: BREACH OF CONTRACT AGAINST K.C.

17. Plaintiff Conductix incorporates by reference the preceding paragraphs of this Complaint as though fully set forth in this claim.
18. Conductix performed its obligations under the contract between it and K.C. through its delivery of the electrical components and materials to the Project.
19. K.C. breached the contract between it and Conductix when it failed and refused to pay Conductix for the electrical components and materials Conductix supplied to the Project.

20. As a direct and proximate result of K.C.'s breach of contract, Conductix has suffered damages in the amount of \$83,595.08, plus interest, attorney's fees, and costs.

SECOND CLAIM: MILLER ACT PAYMENT BOND CLAIM AGAINST ALLEGHENY CASUALTY COMPANY

21. Plaintiff Conductix incorporates by reference the preceding paragraphs of this Complaint as though fully set forth in this claim.

22. Conductix supplied electrical components and materials to K.C. and the Project.

23. Conductix has not been paid amounts owed for supplying electrical components and materials to K.C. and the Project.

24. Defendant Allegheny Casualty Company is obligated, pursuant to the payment bond attached to this Complaint as Exhibit A, and pursuant to the Miller Act, to pay Conductix for the electrical components and materials Conductix supplied to the Project as required by the contract between Conductix and K.C.

25. Conductix is entitled to payment from Allegheny Casualty Company pursuant to the payment bond in the amount of \$83,595.08, plus interest, attorney's fees, and costs.

THIRD CLAIM: UNJUST ENRICHMENT AGAINST K.C.

26. Plaintiff Conductix incorporates by reference the preceding paragraphs of this Complaint as though fully set forth in this claim.

27. K.C. had knowledge that Conductix was supplying valuable electrical components and materials to the Project.

28. K.C. benefited from Conductix's supplying of electrical components and materials to the Project.

29. K.C. failed and continues to fail to pay Conductix for Conductix's electrical components and materials supplied to the Project.

30. K.C.'s receipt and retention of Conductix's electrical components and materials supplied to the Project without payment to Conductix is unjust.
31. Conductix suffered and continues to suffer damages in the amount of \$83,595.08, plus interest, attorney's fees, and costs through the unjust enrichment of K.C.
32. K.C. is liable to Conductix in the amount of \$83,595.08, plus interest, attorney's fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

1. Damages in the amount of \$83,595.08 plus interest;
2. Costs of suit incurred herein;
3. Reasonable attorney's fees; and
4. Such other relief as the Court may deem just and proper.

Respectfully submitted,

s/Michael R. Fortney _____
Michael R. Fortney (#0092325)
Michael L. Fortney (#0032878)
FORTNEY LAW GROUP LLC
4040 Embassy Parkway, Suite 250
Akron, OH 44333
(330) 665-5445
m.fortney@fortneylawgroup.com
fortney@fortneylawgroup.com
Attorneys for Plaintiff Conductix, Inc.